

REMARKS

No claims have been amended, added, or cancelled. No new matter has been added. With entry of this response, claims 13-18 will be pending.

Claim Rejections under 35 U.S.C. § 103

Independent Claim 13

Tanaka and Verdon

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,645,903 to Tanaka et al. (“Tanaka”) in view of U.S. Patent No. 5,063,050 to Verdon et al. (“Verdon”).

Claim 13 recites “[a] cosmetic composition comprising: a liquid phase; and a powder, the powder comprising: a gelling agent for the liquid phase; and mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder, and wherein the cosmetic composition is in a powder form that is transformed into a cream upon application.”

Tanaka does not teach and would not have suggested, among other things, mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder. Rather, Tanaka discloses “a water absorbing material . . . secured to a part or whole of the container into which the aqueous-type solid cosmetic composition is filled.” Tanaka at column 5, lines 48-50. Nevertheless, the Examiner cites column 5, lines 50-55 of Tanaka: “this water absorbing material can solve the above-mentioned problem by absorbing water oozing out from the aqueous-type solid cosmetic composition and by increasing the adhesion strength between the cosmetic composition and the container.” Office action at pages 4-5. The Examiner relies on this citation to contend that the container of Tanaka is “functionally equivalent to the encapsulation or immobilization of the liquid phase on the surface of a solid carrier.” Office action at page 5.

Applicants respectfully submit that the Examiner is mischaracterizing the disclosure of Tanaka. The container of Tanaka differs from the composition of claim 13 in at least its function and in its properties. Tanaka's container "absorbs water" from the composition while it is in the container to prevent water from oozing out of the container, while claim 13's particles encapsulate a liquid phase and then "release[ing] the [liquid] phase . . . [upon] subjecting [the composition] to mechanical stress" to transform it to a cream. Application at paragraph [0025]. Furthermore, the container of Tanaka works by "absorbing water oozing out from the aqueous-type solid cosmetic composition." Tanaka at column 5, lines 52-53. As such, Tanaka's container is not part of the cosmetic composition itself, does not encapsulate or immobilize a liquid phase, nor is it "dispersed in the powder or a component of the powder." Additionally, the container of Tanaka comprises water absorbing materials that include "any water absorbing materials which have affinity to aqueous-type solid cosmetic compositions and can absorb excess water." Tanaka at column 5, lines 56-58. Therefore, the container of Tanaka does not have "a low affinity for the liquid phase," but instead has a high affinity for water in the cosmetic composition. Accordingly, Applicants respectfully submit that Tanaka does not teach and would not have suggested the subject matter of claim 13.

Additionally, the Examiner concedes that Tanaka "fails to expressly disclose the cosmetic composition is in powder form that is transformed into a cream upon application." Office action, page 4.

For the same and similar reasons set forth in response to the previous Office action, one of skill in the art would not be motivated to combine Tanaka and Verdon. Nevertheless, Verdon still does not cure the deficiencies of Tanaka. Specifically, Verdon does not teach and would not have suggested mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder. The Examiner relies on Verdon for the proposition that "it is well known for pressed powders to impart a creamy texture when applied." Office action at page 5. Claim 13, however,

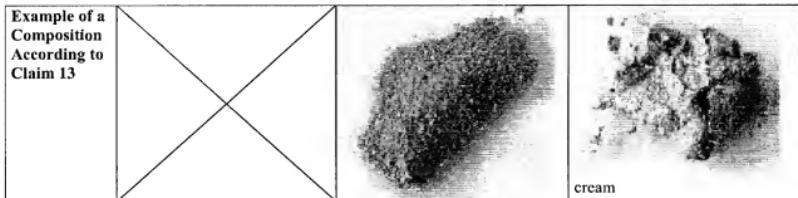
recites that "the cosmetic composition is in a powder form that is transformed into a cream upon application."

To illustrate the difference, a composition was prepared according to Formula II of Verdon at column 4, lines 10-36. Additionally, one example of claim 13 was also prepared. The compositions are set forth in the table below:

Verdon Formula II		Example of a Composition According to Claim 13	
Component	%wt	Component	%wt
Talc	56.5	<i>Phase A</i>	
Aluminium octenyl succinate	4	PW F-MS – Nanofine titanium dioxide treated with silane and fluorine	4.5
Bentone 38	1	Natpure hollow bead = calcium aluminium borosilicate + silica	1.48
Zinc stearate	3	Covabead LH 70-3 = crosslinked PMMA	3.7
Covapress TW 966 : dimethicone + cetearyl octanoate (a binder)	5	Covapearl spark silver 937 AS = pearl (iron oxide + mica)	2.97
Phenoxyethanol	1	Covapearl light brown 830 AS = pearl (iron oxide + mica)	11.85
Bismuth oxychloride	2	<i>Phase B</i>	
Covapearl bright 933 = TiO ₂ + mica	25	Pure water	66.7
Unipure red LC 381 = red iron oxide	1	Phenoxyethanol + paraben	0.3
Unipure black LC 989 = black iron oxide	0.5	Glycerine	5
Unipure yellow LC 181 = yellow iron oxide	0.3	Fucosorb = seaweed extract	1
Unipure Blue LC 686 = ultramarine blue	0.7	Citric acid	0.1
		<i>Phase C</i>	
		Covagel	2.4

As shown below, Verdon's composition does not transform into a cream upon application of mechanical force, but instead remains a powder, which may or may not have a creamy feel on the skin. In contrast, the composition according to claim 13 transforms into a cream upon application of mechanical force.

	Compact powder	Loose powder	After shearing
Verdon Formula II			 loose powder



Applicants respectfully disagree with the Examiner's contention that the "fact that the cosmetic composition is transformed into a cream upon application is an intended use and is not given patentable weight." Office action at page 9. To the contrary, this ability to transform into a cream is a property of the composition itself and should be afforded patentable weight. This property is achieved, at least in part, by the mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder. These components, irrespective of the claimed property, are not taught and would not have been suggested by Verdon. Accordingly, Applicants respectfully traverse the Examiner's contention that the prior art "discloses all components required, as claimed, [and therefore] it would most necessarily perform the same function, being transformed into a cream upon application." Office action at page 9. The Examiner has effectively conceded that Verdon does not disclose all components required, as claimed, by relying on Tanaka as the primary reference. The Examiner relies on Tanaka to allegedly show the components of the claim 13, yet uses a different reference, Verdon, to allegedly show the property of claim 13. A chemical composition and its properties are inseparable. MPEP § 2112.01. Here, not only does the primary reference, Tanaka, not teach or suggest claim 13's composition as set forth above, but the secondary reference, Verdon, does not teach or suggest claim 13's composition, let alone its property, namely, that the composition is in a powder form that is transformed into a cream upon application.

Accordingly, Tanaka and Verdon, taken separately or combined, fail to teach or suggest all the elements of claim 13. Applicants respectfully request withdrawal of the rejection.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. U.S. 2002/0012682 to Kashimoto ("Kashimoto") in view of U.S. Patent No. 6,548,454 to Yamamoto ("Yamamoto") and further in view of Verdon.

Claim 13 is recited above. Kashimoto does not teach or suggest mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder. Rather, Kashimoto discloses a pressed powder composition comprising "a water repellent and an oil repellent powder," "a film-forming polymer," and "an oil." Kashimoto at paragraphs [0010]-[0013]. The Examiner contends that "[t]he film-forming polymer, found in example 1, Table 1, can conceivably form a film over the liquid phase (oil), further encapsulating or immobilizing the liquid phase on the surface of the solid carrier." Office action at page 9. The particles of Kashimoto do not have surface properties that give the particles a low affinity for the liquid phase. Rather, the liquid phase and particles of Kashimoto have high affinity for each other. According to Table 1 of Kashimoto, silicone-treated mica particles are used in the composition only with dimethylpolysiloxane (oil) liquid phase, which have high affinity for each other. As another example, fluorine-treated mica particles are used with perflouropolyether (oil) liquid phase, which have high affinity for each other.

Additionally, the Examiner concedes that "Kashimoto fails to expressly disclose a cosmetic composition in a powder form that is transformed into a cream upon application." Office action, page 9.

For the same and similar reasons set forth in response to the previous Office action, one of skill in the art would not be motivated to combine Kashimoto, Yamamoto, and Verdon. Additionally, neither Yamamoto nor Verdon cures the deficiencies of Kashimoto. Specifically, Yamamoto does not teach or suggest mineral or organic particles having surface properties that give the particles a low affinity for the liquid phase, wherein the liquid phase is encapsulated in or immobilized on the surface of a solid carrier, the solid carrier being dispersed in the powder or a component of the powder. The Examiner contends that "Yamamoto is solely relied upon to

support the modification of fluorinated mica being used as a gelling agent, as it is well known in the art for fluorinated mica to have that property, as evidenced by Yamamoto et al. (claim 1)." Office action at page 10. Applicants respectfully submit that the Examiner has inaccurately equated the mica of Kashimoto with the mica of Yamamoto. These components are not the same. Kashimoto discloses "fluorine-treated mica," namely, mica which is surface treated with polyfluoroalkylphosphoric acid to provide fluorine coated on the outside of the mica. Kashimoto at paragraph [0016] and Table 1. Yamamoto discloses "a fluoro-mica-based lamellar mineral particle," which one of skill in the art would understand to have fluorine in its internal structure. Yamamoto at claim 1. Hence, these components are structurally and chemically different, and as such, would be expected to behave in a different manner. Therefore, Yamamoto does not teach that the fluorinated mica of Kashimoto is a gelling agent.

Verdon does not cure the deficiencies of Kashimoto and Yamamoto. The Examiner contends that "Verdon is solely relied upon to support the intended use that it is well known for pressed powders to impart a creamy texture when applied." Office action at page 10. Yamamoto also fails to cure this deficiency. Applicants respectfully traverse for the reasons set forth above.

Accordingly, Kashimoto, Yamamoto, and Verdon, taken separately or combined, fail to teach or suggest all the elements of claim 13. Applicants respectfully request withdrawal of the rejection.

Dependent Claims 14-18

Claims 14-18 depend from independent claim 13, and therefore, are allowable over the combination of Tanaka and Verdon for at least the reasons stated above for claim 13. These claims may contain additional patentable subject matter for reasons not discussed herein.

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and allowance of claims 13-18. The Examiner is invited to contact the undersigned by telephone at the Examiner's convenience should any issues remain.

Respectfully submitted,

/Gregory J. Hartwig/

Gregory J. Hartwig
Reg. No. 46,761

Docket No. 085516-9004-00

Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, Wisconsin 53202-4108
(414) 271-6560
X:\CLIENTB\085516\9004\B1981291.2